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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

WILLIAM BONEY,  
  
v.  
GREGORY SMITH, *et al.*,  
  
Petitioner,  
  
Respondents.

Case No. 3:15-cv-00193-MMD-WGC

ORDER

This *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 comes before the Court on petitioner’s election to return to state court to exhaust his unexhausted claims. (ECF No. 33.)

On February 21, 2017, the Court determined that this is a mixed petition containing both exhausted and unexhausted claims. As the Court cannot proceed on a mixed petition, it directed petitioner to select one of three options: (1) submit a sworn declaration voluntarily abandoning the unexhausted claims so as to proceed on only the exhausted claims; (2) return to state court to exhaust the unexhausted claims, in which case the petition would be denied without prejudice; or (3) file a motion to stay and abey the exhausted claims so petitioner could return to state court to exhaust his unexhausted claims.

On April 27, 2017, petitioner filed a motion to stay and abey. On December 15, 2017, the Court denied petitioner’s motion and directed petitioner to submit a sworn

1 declaration advising the Court either (1) that he is voluntarily abandoning his unexhausted  
2 claims and will proceed on the exhausted claims only or (2) that he will return to state  
3 court to exhaust his unexhausted claims, in which case this federal habeas petition will  
4 be denied without prejudice.

5 On January 29, 2018, petitioner filed a sworn declaration advising the Court that  
6 he will return to state court to exhaust his unexhausted claims. (ECF No. 33.) It is  
7 therefore ordered that the petition in this action is dismissed without prejudice.

8 It is further ordered that the Clerk of the Court shall enter judgment accordingly.

9  
10 DATED THIS 1<sup>st</sup> day of February 2018.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE